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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/807,565	03/23/2004	David L. Marvit	073338.0188 (04-50461 FLA)	4219
5073	7590	03/27/2007	EXAMINER LIANG, REGINA	
BAKER BOTTS L.L.P. 2001 ROSS AVENUE SUITE 600 DALLAS, TX 75201-2980			ART UNIT 2629	PAPER NUMBER
SHORTENED STATUTORY PERIOD OF RESPONSE	NOTIFICATION DATE		DELIVERY MODE	
3 MONTHS	03/27/2007		ELECTRONIC	

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Notice of this Office communication was sent electronically on the above-indicated "Notification Date" and has a shortened statutory period for reply of 3 MONTHS from 03/27/2007.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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Office Action Summary	Application No.	Applicant(s)	
	10/807,565	MARVIT, DAVID L.	
	Examiner	Art Unit	
	Regina Liang	2629	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 12 February 2007.
- 2a) This action is **FINAL**. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-21 is/are pending in the application.
 - 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 1-21 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) <input type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413)
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	Paper No(s)/Mail Date. _____
3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date <u>2/12/07</u> .	5) <input type="checkbox"/> Notice of Informal Patent Application
	6) <input type="checkbox"/> Other: _____.

DETAILED ACTION

1. This Office Action is responsive to amendment filed 2/12/07. Claims 1-21 are pending in the application.
2. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claim Rejections - 35 USC § 103

3. Claims 1, 2, 8, 9, 11, 12, 15, 17, 18, 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bartlett (US 6,573,883) in view of Cherveny (US 6,564,144) and Shapiro (US 65,766,015).

As to claims 1, 2, 9 and 21, Fig. 5 of Bartlett discloses a motion controlled handheld device comprising:

a user interface comprising a display (710) having a viewable surface and operable to generate a current image;

a gesture database maintaining a plurality of gestures (catalog of gesture commands in Fig. 3), each gesture defined by a motion of the device with respect to a first position of the device;

a motion detection module (110 in Fig. 3) operable to detect motion of the device within three dimensions and to identify components of the motion in relation to the viewable surface (col. 4, lines 37-50); and

a control module (120 in Fig. 3) operable to:

track movement of the handheld device using the motion detection module; compare the tracked movement against potential ones of the gestures (col. 4, lines 53-60), determine that the tracked movement does not indicate one of the gestures or indicates one of the gestures (col. 5, lines 40-47; if the angular orientation is less than θ_1 , the tracked movement does not perform the gesture; if the angular orientation is greater than θ_1 , the tracked movement performs the gesture).

Bartlett does not disclose generating a feedback reporting that the tracked movement does not indicate the gesture or indicates the gesture. However, Fig. 6 of Cherveny teaches a data input device having a gesture recognition routine, the gesture recognition routine outputs an audible output (indication) to the speaker indicating that the gesture has been recognized (see col. 9, lines 49-63 for example; this corresponds to generating feedback to indicate the gesture). Also, Shpiro teaches a device comprising an indication for indicating the failure of a match such that an audio or visible feedback indication is provided to the user to identify the matched and indicating whether it is matched or not matched (col. 5, lines 1-6). Thus, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the system of Bartlett to have the indicating features as taught by Cherveny and Shpiro so as to provide computerized interpretation of gestures to input data into the data collection system in a safe and substantially accurate manner and to input data at a relatively high speed while allowing for an “eyes-free” data entry (col. 2, lines 50-55 of Cherveny) and to provide a feedback indication to the user clearly indicating to the user whether it indicates a gesture or not (col. 5, lines 3-6 of Shpiro).

As to claim 8, Shpiro teaches generating audio output using the speaker.

Claims 11, 12, 15, 17, 18, which are method claims corresponding to the above apparatus claims, are rejected for the same reasons as stated above since such method "steps" are clearly read on by the corresponding "means".

4. Claims 3, 7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bartlett, Chervny and Shapiro, and further in view of Keely (us 6,791,536 hereinafter Keely).

As to claim 3, Bartlett as modified by Cherveny and Shapiro does not disclose the feedback to display an icon associated with the gesture. However, Shapiro teaches that feedback indications can be both visible and audio indications and further Keely teaches that visible feedbacks comprise graphical icons (Keely col. 8 lines 11-14). Thus, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the device of Bartlett as modified by Cherveny and Shapiro to comprise icons as the visible feedback indication such that the user can easily distinguish the specific feedback. In addition, to associate the icon with a particular gesture would have been further obvious to one of ordinary skill in the art at the time the invention was made to clearly indicate to the user which gesture is being selected to avoid confusion.

As to claim 7, Keely teaches to provide a tactile (vibration) feedback to the user.

5. Claims 10, 16, 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bartlett, Cherveny and Shapiro, and further in view of Feinstein (us 2002/0190947).

Bartlett teaches using multiple motion sensors for sensing the motion of the device (col. 5, lines 2-4). Bartlett as modified by Cherveny and Shapiro does not explicitly disclose using

first, second and third accelerometer for detecting acceleration along a first, second and third axis. However, Feinstein teaches using three accelerometers for detecting the motion of the device along a first, second and third axis (see Fig. 14). Thus, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the device of Bartlett as modified by Cherveny and Shapiro to use three accelerometers as taught by Feinstein since the three accelerometers measure the acceleration of the device along three independent directions precisely.

Allowable Subject Matter

6. Claims 4-6, 14 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Response to Arguments

7. Applicant's arguments filed 2/12/07 have been fully considered but they are not persuasive.

Applicant's argument in that "no portion of any of the references discloses generating feedback reporting that tracked movement does not indicate a gesture" and regarding reference Shapiro "this system does not relate in any way to a motion controlled handheld device and one that is able to detect motion of the device to operate as user input", are not persuasive. Applicants cannot show non-obviousness by attacking references individually where, as here the rejections are based on combination of references.

In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the

teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, Cherveny teaches to provide computerized interpretation of gestures to input data into the data collection system in a safe and substantially accurate manner and to input data at a relatively high speed while allowing for an “eyes-free” data entry (col. 2, lines 50-55) and Shpiro teaches to provide a feedback indication to the user clearly indicating to the user whether it indicates a gesture or not (col. 5, lines 3-6). Therefore, the combination as a whole teaches providing clear and useful indications to the user whether the input is correct or not and the combination renders the claimed invention obvious as set forth in the above rejections.

Conclusion

8. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event,

however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Regina Liang whose telephone number is (571) 272-7693. The examiner can normally be reached on Monday-Friday from 8AM to 5:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Richard Hjerpe, can be reached on (571) 272-7691. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Regina Liang
Primary Examiner
Art Unit 2674

3/20/07